BELLSOUTH

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REGULATORY AUTH

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April 16, 2001

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VIA HAND DELIVERY

David Waddell, Executive Secretary Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, TN 37238

Re: Petition to Convene a Contested Case Proceeding to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements

Docket No. 97-01262

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Response to Comments filed by AT&T and SECCA regarding BellSouth's tariff. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH:ch Enclosure BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

In Re:

Petition to Convene a Contested Case Proceeding to Establish

"Permanent Prices" for Interconnection and Unbundled Network

Elements

Docket No. 97-01262

BELLSOUTH'S RESPONSE TO COMMENTS
FILED BY AT&T AND SECCA REGARDING BELLSOUTH'S TARIFF

BellSouth Telecommunications, Inc. ("BellSouth") submits this response to

the comments filed by AT&T of the South Central States, Inc. ("AT&T") and the

Southeastern Competitive Carriers Association ("SECCA") regarding BellSouth's

tariff filed on March 2, 2001.

BACKGROUND

At its December 19, 2000 Conference, in connection with Docket No. 97-

01262, the Authority directed BellSouth to submit a tariff including: (1) rates,

terms and conditions for the interconnection services and unbundled network

elements ("UNEs") included in BellSouth's cost studies filed on December 1, 1999;

(2) the rates for combinations of UNEs filed by BellSouth on June 9, 2000; and (3)

the rates for physical collocation produced by the AT&T/MCI collocation model as

adopted by the Authority on January 25, 1999. The Authority was specific in its

direction that BellSouth's tariff reflect the Authority's decisions "in this docket" -

that is, Docket No. 97-01262.

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The tariff filed by BellSouth on March 2, 2001 sets forth all of the final rates ordered by the Authority in Docket No. 97-01262. The Authority did not adopt terms and conditions in that docket. Therefore, the Authority did not specify the particular terms and conditions that should be included in BellSouth's tariff. In the tariff, BellSouth submitted terms and conditions that correspond to the rates adopted by the Authority.

AT&T raised four issues in its comments. First, AT&T argued that certain terms and conditions of the tariff do not conform to decisions by the Authority in other proceedings. AT&T Comments, at p. 1. In particular, AT&T takes issue with language in the tariff concerning combinations of unbundled network elements ("UNEs") and reciprocal compensation for ISP-bound traffic. Second, AT&T expressed concern that the tariff contains language concerning issues which are presented in the AT&T arbitration. AT&T Comments, at 1. Third, AT&T asked the Authority to "make clear that, while AT&T is entitled to purchase UNEs at the rates approved by the TRA in this proceeding and attached to the tariff (and may do so by sending a letter to BellSouth), AT&T is not thereby required to comply with any terms or conditions other than those set forth in its interconnection agreement with BellSouth." AT&T Comments, at 2. Fourth, and finally, AT&T suggested that the Authority should "impose on BellSouth a continuing obligation to revise its tariff as such issues are resolved in generic proceedings and in proceedings with individual companies." Id.

SECCA expressed concern regarding tariff language related to the combination of UNEs, reciprocal compensation for ISP-bound traffic, and trunk forecasting requirements. SECCA Comments, at 1-2. SECCA also suggests that the Authority reject the entire tariff except the price list.¹

DISCUSSION

If the Authority intends to implement the provisions of the Telecommunications Act of 1996, 110 Stat. 56 (the "1996 Act") through a general tariff, then BellSouth's tariff should be approved as filed on March 2, 2001.² The terms and conditions are reasonable and the rates are those which the Authority adopted in Docket No. 97-01262.

1. The Tariff Does Not Require CLECs To Accept All Of Its Terms And Conditions To Adopt The Rates.

AT&T's concerns that the tariff will force it and other CLECs to accept every term and condition in the tariff in order to get the new rates is unfounded. Section C1.1(A) of the tariff states, in the clearest of terms, that the tariff "does not preclude CLECs from negotiating a local interconnection agreement with [BellSouth] which includes rates, terms, and conditions different from those stated herein" Moreover, Section C1.1(D) states explicitly that "[a] CLEC may incorporate the

¹ SECCA's suggestion is ironic considering that it was SECCA that filed a motion insisting that BellSouth file a tariff.

² BellSouth has expressed its view that the Authority should not attempt to implement the provisions of the 1996 Act through a general tariff. BellSouth will not reproduce its arguments in this filing, but BellSouth's defense of the specific provisions of its tariff should not be construed as a waiver of BellSouth's position regarding the validity of the Authority's actions.

rates, terms, and conditions in this tariff for UNEs and services into a currently effective local interconnection agreement with the Company in accordance with the provisions set forth in such local interconnection agreement for amending or modifying the provisions thereof." Finally, Section C1.1(E) states that the provisions in the tariff "do not supersede or in any way modify the provisions, including rates, terms, and conditions, of any currently effective agreement between any CLEC and [BellSouth]."

Thus, AT&T, or any other CLEC with a currently effective interconnection agreement, may incorporate the new permanent rates established by the Authority by so notifying BellSouth and then amending its interconnection agreement in accordance with the provisions of that interconnection agreement. It is not necessary that the CLEC incorporate all of the specific terms and conditions in the tariff in order to incorporate the new rates. Of course, to implement the new rates, the CLEC's agreement would have to contain terms and conditions that correspond to the rates adopted by the Authority because rates do not exist in isolation. Rather, rates must be accompanied by terms and conditions. See AT&T v. Central Office Telephone, Inc., 524 U.S. 214, 118 S. Ct. 1956, 1963 (1998) ("Rates, however, do not exist in isolation. They have meaning only when one knows the services to which they are attached.").

Therefore, if a CLEC does not have terms and conditions in its current agreement that correspond to the particular element or service for which the Authority has established a permanent rate, then terms and conditions must be

negotiated for that element or service. At its option, the CLEC could accept the terms and conditions in the tariff or negotiate different terms and conditions. The CLEC could choose to accept the terms and conditions in the tariff by executing a Notice of Election as described in Section C1.1(C). Otherwise, BellSouth is willing to negotiate terms and conditions in accordance with the 1996 Act.

2. The Tariff Should Not Preclude Parties From Arbitrating Disputed Issues.

By raising concerns about the tariff's inclusion of terms and conditions that are also the subject of AT&T's arbitration with BellSouth, AT&T seems to be suggesting that it would be inappropriate for the tariff to address any subject that AT&T has not yet had the opportunity to raise in an arbitration. At the same time, AT&T argues that any issue which the Authority has considered in any arbitration should be conclusive as to all parties in Tennessee and the decision on such issues should be included in the tariff. AT&T cannot have it both ways. Either the tariff will supersede the arbitration process or it will not. In the hearing of AT&T's arbitration with BellSouth last week, Mr. Bradbury testified that, if another company arbitrated with BellSouth on an issue which affected AT&T and the result were unsatisfactory to AT&T, he would not simply accept that result: "If we thought the position that was arrived at was so adverse to our interests, we would have to consider additional action." Transcript of Proceedings (4/10/01), Docket No. 00079, Vol. II(B) at p. 214. Thus, it seems that AT&T would advocate that the tariff should not preclude a party from arbitrating an issue before the Authority.

BellSouth believes that the tariff should <u>not</u> interfere with the negotiation and arbitration process established in the 1996 Act. That is, the tariff should not be used to eliminate the rights of parties to present issues to the Authority in an arbitration simply because another party also raised the issue in an earlier arbitration. Certainly, the Authority's arbitration orders have never stated that the decision in one arbitration will bind third parties. AT&T's suggestion that the tariff be continually modified to reflect decisions from two-party arbitrations seems to pursue that result. Of course, through the "pick and choose" process, a CLEC can incorporate terms and conditions from another CLEC's approved interconnection agreement. Therefore, there is no compelling reason for revising the tariff to incorporate such provisions.

To the extent that AT&T suggests that the decisions from generic dockets be included in the tariff, BellSouth agrees with that suggestion, assuming that the issues were properly raised in the generic docket and that all parties were able to participate and were provided with prior notice and an opportunity to be heard on the issues.³ Indeed, BellSouth already incorporates state commission decisions from generic dockets into its standard interconnection agreements.

CONCLUSION

BellSouth's tariff reflects the Authority's decisions in Docket No. 97-01262.

The terms and conditions submitted by BellSouth permit CLECs to obtain the

³ If the Authority decides, without notice and in violation of basic due process rights, to resolve an issue in a generic docket that was not presented by any party, then language related to that decision should not be included in the tariff.

services in the tariff from BellSouth without negotiating an individual agreement. Moreover, the permanent rates in the tariff can be incorporated into currently effective agreements that contain terms and conditions that correspond to the rates adopted by the Authority. BellSouth has complied fully with the Authority's order concerning the filing of a tariff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2001, a copy of the foregoing document was served on the parties of record as indicated:

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